

SUPPORTING STATEMENT
United States Patent and Trademark Office
Secrecy and License to Export
OMB CONTROL NUMBER 0651-0034
(September 2013)

A. JUSTIFICATION

1. Necessity of Information Collection

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries.

In particular, whenever the publication or disclosure of an invention by the publication of an application or by the granting of a patent is, in the opinion of the head of an interested government agency, determined to be detrimental to national security, the Commissioner for Patents at the United States Patent and Trademark Office (USPTO) must issue a secrecy order and withhold the publication of a patent application and the grant of a patent for such period as the national interest requires. A patent will not be issued on the application as long as the secrecy order is in force. If a secrecy order is applied to an international application, the application will not be forwarded to the International Bureau as long as the secrecy order is in effect.

Three types of secrecy orders, each of a different scope, can be issued. The first type, Secrecy Order and Permit for Foreign Filing in Certain Countries, is intended to permit the widest utilization of the technical data in the patent application while still controlling any publication or disclosure that would result in an unlawful exportation. The second type, the Secrecy Order and Permit for Disclosing Classified Information, is used to treat classified technical data presented in a patent application in the same manner as any other classified material. The third type of secrecy order is used where the other types of orders do not apply, including orders issued by direction of agencies other than the Department of Defense.

Under the provision of 35 U.S.C. § 181, a secrecy order remains in effect for a period of one year from its date of issuance. A secrecy order may be renewed for additional periods of not more than one year upon notice by a government agency that the national interest continues to require it. The applicant is notified of such renewal.

When the USPTO places a secrecy order on a patent application, the rules authorize the applicant to petition the USPTO for permits to allow disclosure, modification, or rescission of the secrecy order, or to obtain a general or group permit. In each of these circumstances, the petition is forwarded to the appropriate defense agency for decision. Also, the Commissioner for Patents at the USPTO may rescind any order upon

notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the disclosure of the invention is no longer deemed detrimental to the national security.

Unless expressly ordered otherwise, action on the application and prosecution by the applicant will proceed during the time the application is under secrecy order to a specific point as indicated under 37 CFR 5.3. Applications under secrecy order that come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant, but unless specifically indicated by the Commissioner of Patents at the USPTO, will not be set for hearing until the secrecy order is removed.

In addition to the issuance of secrecy orders, the USPTO is required to grant foreign filing licenses to applicants. The filing of a patent application is considered a request for a foreign filing license. However, in some instances an applicant may need a license for filing patent applications in foreign countries prior to a filing in the USPTO or sooner than the anticipated licensing of a pending patent application.

To file a patent application in a foreign country, the applicant can petition the USPTO for a foreign filing license either with or without a corresponding United States application. In addition, the applicant can petition to change the scope of a license and, when a patent application is filed through error in a foreign country without the appropriate filing license, an applicant can petition the USPTO for a retroactive license.

2. Needs and Uses

This collection includes the information needed by the USPTO to review and issue or revoke the various types of petitions regarding secrecy orders and foreign filing licenses. There are no forms associated with the petitions in this collection. Response to this information collection is necessary to obtain a permit to disclose, modify or rescind a secrecy order, to obtain general or group permits, to obtain foreign filing and retroactive licenses, or to change the scope of a license.

The Information Quality Guidelines from Section 515 of Public Law 106-554, Treasury and General Government Appropriations Act for fiscal year 2001, apply to this information collection, and this information collection and its supporting statement comply with all applicable information quality guidelines, *i.e.*, OMB and specific operating unit guidelines.

Table 1 lists the specific statutes and regulations authorizing the USPTO to collect this information and outlines how this information is used by the public and the USPTO:

Table 1: Information Requirements and Needs and Uses of Information Collected

Item #	Requirement	Statute	Rule	Form #	Needs and Uses
1	Petition for Rescission of Secrecy Order	35 U.S.C. § 181-188	37 CFR 5.1–5.33	No Form	<ul style="list-style-type: none"> Used by the public to present evidence to the USPTO that the patent application no longer requires a secrecy order. Used by the USPTO to determine whether an invention remains subject to a secrecy order.
2	Petition to Disclose or Modification of Secrecy Order	35 U.S.C. § 181-182	37 CFR 5.4	No Form	<ul style="list-style-type: none"> Used by the public to petition the USPTO for a permit to disclose a patent application currently under a secrecy order. Used by the public to petition the USPTO to modify a secrecy order. Used by the USPTO to query a defense agency to determine whether a permit can be issued to allow disclosure of a patent application currently under a secrecy order. Used by the USPTO to query a defense agency to determine whether a patent application currently under secrecy order can be modified.
3	Petition for General and Group Permits	35 U.S.C. § 181	37 CFR 5.5, 37 CFR 5.5(e)	No Form	<ul style="list-style-type: none"> Used by organizations or individuals inside an organization to petition the USPTO for a permit allowing use of patent applications under secrecy orders. Used by the USPTO to query a defense agency to determine whether an organization or individuals inside an organization qualify for permission to handle patent applications under secrecy orders.
4 5 6 7	Petitions for Foreign Filing Licenses: <ul style="list-style-type: none"> Petition for Expedited Handling of License (no corresponding application) Petition for Expedited Handling of License (corresponding U.S. application) Petition for Changing Scope of License Petition for Retroactive License 	35 U.S.C. §§ 184-186	37 CFR 5.11–5.33 37 CFR 5.12, 5.13; 37 CFR 1.17(g) 37 CFR 5.12, 5.14; 37 CFR 1.17(g) 37 CFR 5.15; 37 CFR 1.17(g) 37 CFR 5.25; 37 CFR 1.17(g)	No Forms	<ul style="list-style-type: none"> Used by the public to petition the USPTO for various licenses to file and/or export patent applications, technical data, and other information in a foreign country. Used by the public to request a change in the scope of a license. Used by the public to appeal the USPTO's denial of a retroactive license. Used by the public to ensure that the appropriate fees have been submitted. Used by the USPTO to examine and issue or revoke, as appropriate, various types of foreign filing licenses. Used by the USPTO to determine whether an unlicensed filing violated any export regulations. Used by the USPTO to ensure that the appropriate fees have been submitted.

3. Use of Information Technology

The USPTO currently accepts the electronic filing of most patent applications and related documents through its Web-based patent application and document submission solution, EFS-Web. The USPTO's Legal Framework for EFS-Web, available at www.uspto.gov, provides more information about the types of patent applications and documents permitted to be filed via EFS-Web. With respect to the information associated with this collection, the USPTO at this time only accepts through EFS-Web petitions for foreign filing licenses for applications on file with the USPTO. The USPTO is not currently collecting through EFS-Web petitions for foreign filing licenses where there is not a U.S. patent application on file or any of the petitions under the secrecy order program. However, a separate database is being used to collect petition information related to expedited foreign filing license petitions, and the petition itself is being scanned and retained in electronic form on Image File Wrapper (IFW).

Due to its extremely sensitive nature (national security interests) and low volume, information associated with this collection pertaining to applications under a secrecy order cannot be electronically collected in a feasible manner. In particular, information associated with this collection pertaining to applications under a secrecy order cannot be collected using the same electronic system that is used for the filing of papers pertaining to applications not under a secrecy order. An entirely separate electronic system would have to be designed and implemented, including separate, secure servers. On balance, the cost factor of designing and putting into operation such a system against the low volume of filings makes this alternative cost prohibitive and not a feasible option.

New features and capabilities are being added to EFS-Web as it undergoes further development, and customers will eventually be able to file all applications and related documents electronically through EFS-Web. As the USPTO expands the use of electronic filing, the USPTO will reevaluate whether it is feasible for the secrecy order program petitions to be filed electronically as well. If the security issues are resolved and the electronic collection of these items becomes feasible, the USPTO will submit the associated electronic forms to OMB for review, as necessary.

4. Efforts to Identify Duplication

This information is collected to issue permits to disclose, modify or rescind secrecy orders, to grant general or group permits, to obtain foreign filing and retroactive licenses, or to change the scope of a license. This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing Burden to Small Entities

No significant economic impact is imposed on small entities or small businesses as a result of this information collection. The same information is required of every applicant and is not available from any other source.

Pursuant to section 10(b) of the Leahy-Smith America Invents Act (AIA), the USPTO provides a 50% reduction in the fees for certain patent filings by small entity applicants, such as independent inventors, small businesses, and nonprofit organizations who meet the definition of a small entity provided at 37 CFR 1.27. Also pursuant to section 10(b) of the AIA, the USPTO provides a 75% reduction in the fees set or adjusted under section 10(a) of the Act for certain patent filings by applicants who meet the definition of a micro entity provided at 35 U.S.C. § 123 and 37 CFR 1.29.

No significant burden is placed on small or micro entities, in that small entities must only identify themselves as such in order to obtain these benefits, and micro entities must only provide a certification of micro entity status. An assertion or certification of small or micro entity status, respectively, only needs to be filed once in an application or patent (although a fee may be paid in the micro entity amount only if the applicant or patentee is still entitled to micro entity status on the date the fee is paid).

6. Consequences of Less Frequent Collection

This information is collected only when the respondent petitions the USPTO for permits to disclose, modify or rescind secrecy orders, to grant general or group permits, to obtain foreign filing and retroactive licenses, and to change the scope of a license. It could not be conducted less frequently. If the collection of information were not collected, the USPTO could not comply with the requirements of 35 U.S.C. §§ 181-188 and 37 CFR 5.1–5.33.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this collection of information.

8. Consultations Outside the Agency

The 60-Day Notice was published in the *Federal Register* on April 23, 2013 (78 Fed. Reg. 23916). The comment period ended on June 24, 2013. No public comments were received.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, independent inventor groups, and users of our public facilities. Views expressed by these groups are considered both in developing proposals for information collection requirements and when reviewing an existing information collection.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent.

10. Assurance of Confidentiality

Confidentiality is governed by statute (35 U.S.C. §§ 122 and 181) and regulation (37 CFR 1.11, 1.14 and 5.1-5.3). This collection contains confidential information that is subject to the Privacy Act. Systems of Records Notices for *Patent Application Secrecy Order Files (Commerce/PAT-TM-8)* were published in the Federal Register on March 29, 2013 (78 FR 19246) and for *Petitioners for License to File for Foreign Patents (Commerce/PAT-TM-13)* on April 1, 2013 (78 FR 19463). Records are maintained for referral to authorized government agencies under 35 U.S.C. § 184 for determination of the requirement for a secrecy order, notification of the applicant or his duly appointed representative of such secrecy order, to prevent disclosure of information that might be detrimental to national security, and in accordance with agency rules.

Anyone wishing to view documents recorded under secrecy orders or view recorded documents in which the Federal government has an interest must submit authorization in writing before the USPTO will release the documents for inspection, according to 37 CFR 102 subpart B. Records are stored in paper in file folders in a locked vault and maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Documents under secrecy orders cannot be filed electronically due to national security concerns.

Administrative controls are used to safeguard this information as appropriate. The petitions are stored in paper copy and electronic storage media in a searchable database. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Where information is retrievable by computer, all safeguards appropriate to secure the system (hardware and software) are utilized.

11. Justification for Sensitive Questions

None of the required information is considered to be sensitive.

12. Estimate of Hour and Cost Burden to Respondents

Table 2 calculates the burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that it will receive approximately 2,294 responses annually, with approximately 25% (574) of these responses from small entities. None of the responses for this collection will be submitted electronically.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public between 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare the appropriate petition, and submit the petition to the USPTO, depending on the complexity of the situation.

These estimates are based on the Agency’s long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$371 per hour for respondent cost burden calculations, which is the mean rate for attorneys in private firms as shown in the 2011 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA).

Table 2: Burden Hour/Burden Cost to Respondents

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
1	Petition for Rescission of Secrecy Order	3.0	8	24	\$371.00	\$8,904.00
2	Petition to Disclose or Modification of Secrecy Order	2.0	12	24	\$371.00	\$8,904.00
3	Petition for General and Group Permits	1.0	1	1	\$371.00	\$371.00
4	Petition for Expedited Handling of License (no corresponding application)	0.5	1,900	950	\$371.00	\$352,450.00
5	Petition for Expedited Handling of License (corresponding U.S. application)	0.5	300	150	\$371.00	\$55,650.00
6	Petition for Changing Scope of License	0.5	3	2	\$371.00	\$742.00
7	Petition for Retroactive License	4.0	70	280	\$371.00	\$103,880.00
	TOTAL	- - - - -	2,294	1,431	- - - -	\$530,901.00

13. Total Annualized (Non-hour) Cost Burden

The total annual (non-hour) cost burden for this collection is calculated in Table 3 below. Postage fees are included in this ICR; filing fees for the petitions are covered under 0651-0072. There are no filing fees for the secrecy orders. This collection has no capital start-up, maintenance, or record keeping costs.

Postage

The USPTO estimates that 99% of the petitions in this collection are submitted by facsimile or hand carried because of the quick turnaround required. For the 1% of the public that chooses to submit the petitions to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average postage cost for a paper

submission will be \$5.60 (rounded to \$6) (USPS Priority Mail, flat rate envelope) and that 23 submissions will be mailed to the USPTO per year.

Table 3: Annual (Non-hour) Postage Costs to Respondents

Item #	Item	Estimated Annual Responses	Amount	Totals
1	Petition for Rescission of Secrecy Order	1	\$5.60	\$6.00
2	Petition to Disclose or Modification of Secrecy Order	1	\$5.60	\$6.00
3	Petition for General and Group Permits	0	\$5.60	\$0.00
4	Petition for Expedited Handling of License (no corresponding application)	16	\$5.60	\$90.00
5	Petition for Expedited Handling of License (corresponding U.S. application)	3	\$5.60	\$17.00
6	Petition for Changing Scope of License	1	\$5.60	\$6.00
7	Petition for Retroactive License	1	\$5.60	\$6.00
	Total postage for mailed submissions	23	- - - - -	\$131.00
	Total Annual (Non-hour) Cost Burden	- - - - -	- - - - -	\$131.00

Fees

There are fees associated with the license petitions in this collection (no fees are associated with the secrecy order petitions) but they are not included in this information collection request. Instead, the filing fees are covered under OMB control number 0651-0072 America Invents Act Section 10 Patent Fee Adjustments, which was approved by OMB in January 2013. Filing fees are now being removed from the burden calculations in this collection (0651-0034) to avoid double-counting.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes USPTO staff approximately 30 minutes (0.5 hours) to 4 hours to process the information in this collection, depending on the type and amount of information submitted. The secrecy order petitions in this collection are processed by GS-7, step 5 employees at an estimated cost of \$29.80 per hour (GS-7/5 hourly rate of \$22.92 with 30% (\$6.88) added for benefits and overhead). The license petitions in this collection are processed by GS-13, step 2 employees at an estimated cost of \$57.30 per hour (GS-13/2 hourly rate of \$44.08 with 30% (\$13.08) added for benefits and overhead).

Table 4 calculates the burden hours and costs to the Federal Government for processing this information collection:

Table 4: Burden Hour/Cost to the Federal Government

Item #	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
1	Petition for Rescission of Secrecy Order	1.0	8	8	\$29.80	\$238.00
2	Petition to Disclose or Modification of Secrecy Order	1.0	12	12	\$29.80	\$358.00
3	Petition for General and Group Permits	1.0	1	1	\$29.80	\$30.00
4	Petition for Expedited Handling of License (no corresponding application)	0.5	1,900	950	\$57.30	\$54,435.00
5	Petition for Expedited Handling of License (corresponding U.S. application)	0.5	300	150	\$57.30	\$8,595.00
6	Petition for Changing Scope of License	1.0	3	3	\$57.30	\$172.00
7	Petition for Retroactive License	4.0	70	280	\$57.30	\$16,044.00
	TOTAL	- - - - -	2,294	1,404	- - - - -	\$79,872.00

15. Reason for Changes in Burden from the Current Inventory

The USPTO is submitting the following changes for this renewal:

- Adjusting the estimated annual responses and burden hours.
- Removing the fees associated with the information requirements in this collection because these fees have been moved into information collection 0651-0072 America Invents Act Section 10 Patent Fee Adjustments, which was approved by OMB in January 2013 in conjunction with the USPTO rulemaking “Setting and Adjusting Patent Fees” (RIN 0651-AC54). The corresponding fees are now being deleted from 0651-0034 to avoid double-counting those annual (non-hour) costs in the USPTO’s inventory.
- Adjusting the estimated number of mailed submissions and the estimated postage rate.

This information collection is currently approved with a total of 1,794 responses, 1,538 burden hours, and \$356,879 in annual (non-hour) costs. There have been no interim approvals.

Changes in Responses and Burden Hours from the Current Inventory

The USPTO estimates total annual responses of 2,294 and total annual burden hours of 1,431, which is an increase of 500 responses and a decrease of 107 burden hours from the currently approved burden for this collection.

These changes are due to administrative adjustments from updated annual response estimates.

Table 5a: Changes in Responses and Burden Hours from the Current Inventory

Item #	Item	Currently approved responses	Updated responses	Change in responses (admin.)	Currently approved burden hours	Updated burden hours	Change in burden hours (admin.)
1	Petition for Rescission of Secrecy Order	6	8	2	18	24	6
2	Petition to Disclose or Modification of Secrecy Order	3	12	9	6	24	18
3	Petition for General and Group Permits	1	1	0	1	1	0
4	Petition for Expedited Handling of License (no corresponding application)	1,347	1,900	553	674	950	276
5	Petition for Expedited Handling of License (corresponding U.S. application)	259	300	41	130	150	20
6	Petition for Changing Scope of License	1	3	2	1	2	1
7	Petition for Retroactive License	177	70	(107)	708	280	(428)
	Totals	1,794	2,294	500	1,538	1,431	(107)

Changes in Annual (Non-hour) Costs from the Current Inventory

The total annual (non-hour) cost burden for this renewal submission of \$131 is a decrease of \$356,748 from the currently approved total of \$356,879. This decrease is due to both program changes and administrative adjustments.

Program Changes

- Fees: The fees in this collection are being removed because they have been moved into collection 0651-0072.

Administrative Adjustments

- Postage: Increase due to a decrease in the estimated number of mailed submissions offset by an adjustment in USPS postage method and rates (from first class to priority mail, flat rate envelope) since the previous renewal.

Table 5b: Changes in Annual (Non-hour) Costs from the Current Inventory

Cost	Currently approved annual cost burden	Program changes	Administrative adjustments	Total change in costs	Updated annual cost burden
Filing Fees	\$356,800.00	(\$356,800.00)	\$0.00	(\$356,800.00)	\$0.00
Postage	\$79.00	\$18.00	\$34.00	\$52.00	\$131.00
Totals	\$356,879.00	(\$356,782.00)	\$34.00	(\$356,748.00)	\$131.00

16. Project Schedule

There is no plan to publish this information for statistical use.

17. Display of Expiration Date of OMB Approval

There are no forms in this information collection. Therefore, the display of the OMB Control Number and the expiration date is not applicable.

18. Exception to the Certificate Statement

No exceptions to the certificate statement are included in this collection of information.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.